Constitutionality of Presumptions under the Misuse of Drugs Act:
Jumaat bin Mohamed Sayed & 3 Ors v Attorney-General
[2025] 1 SLR 1287, [2025] SGCA 40

I. Executive Summary

This case involves the following statutory presumptions. Section 17 of the Misuse of Drugs Act 1973 (2020 Rev Ed) ("MDA") states that where an accused is in possession of more than a certain quantity of a controlled drug, he is presumed to have possessed the drug for the purpose of trafficking, unless it is proved that the possession was not for such purpose. Section 18(1) states that where an accused is proved to have in his possession, custody or control anything containing a controlled drug, he is presumed to have had that drug in his possession. Finally, Section 18(2) provides that any person who is proved or presumed to have had a controlled drug in his possession is presumed to have known the nature of that drug. These presumptions are collectively termed the "MDA Presumptions".

In *Jumaat bin Mohamed Sayed & 3 Ors v Attorney-General* [2025] 1 SLR 1287, the applicants (all prisoners who had been sentenced to the mandatory death penalty for drug-trafficking related offenses) challenged the constitutionality of the MDA Presumptions, specifically with regard to Articles 9(1) and 12(1) of the Constitution of the Republic of Singapore (2020 Rev Ed) (the "Constitution") and the "presumption of innocence".

The Court of Appeal ("**CA**") found that there was no merit to the applicants' constitutional challenge, and dismissed the challenge. On Article 9(1), the CA affirmed the "fundamental rules of natural justice" as having constitutional status under Article 9(1) but held that the MDA Presumptions are consistent with the fundamental rules of natural justice. On Article 12(1), the CA held that the "reasonable classification" test was passed as the differential treatment of drug offenders bears a rational nexus to the object of the MDA Presumptions. Thus, the MDA Presumptions are constitutional.

II. Material Facts

The applicants were previously convicted of an offence of drug trafficking under section 5 of the MDA and subsequently sentenced to the mandatory death penalty. After a series of challenges and appeals were dismissed, they ultimately appealed to the CA, with the overarching question being whether the MDA Presumptions were inconsistent with the protections enshrined in Articles 9(1) and 12(1) of the Constitution and the "presumption of innocence".

III. Issues

The CA considered the following issues (amongst others):

(a) the nature and effect of the MDA Presumptions;
(b) whether the MDA Presumptions are inconsistent with the fundamental rules of natural justice enshrined in Article 9(1) of the Constitution;
(c) whether the MDA Presumptions violate the principle of equality under Article 12(1) of the Constitution; and
(d) whether the courts have the power to read down the MDA Presumptions.

Finally, the CA made some additional observations on the MDA Presumptions.

A. Nature and effect of the MDA Presumptions

The CA first clarified that the MDA Presumptions are evidential tools that operate to presume specific facts relevant to the issues before the court. They are also rebuttable presumptions of law, that place the persuasive burden on the accused person to disprove the presumed fact on the balance of probabilities. This was the settled jurisprudence throughout the existence of the MDA.

Section 17 ("presumption of trafficking") states that anyone who is proved to have possessed specified drugs in certain amounts is presumed to have possessed those drugs for trafficking. Section 18(1) ("presumption of possession") states that anyone who is proved to have possessed or controlled: (a) anything containing controlled drugs; (b) the keys of anything containing a controlled drug; (c) the keys of any place or premises or any part thereof in which a controlled drug is found; or (d) a document of title relating to a controlled drug or any other document intended for the delivery of a controlled drug, is presumed to have possessed that drug. Finally, section 18(2) ("presumption of knowledge") states that anyone who is proved or presumed to have possessed controlled drugs shall be presumed to have known the nature of that drug.

As such, once any one of the four predicate facts under section 18(1) are proved beyond a reasonable doubt by the Prosecution, the accused is presumed to have in his or her possession the relevant drugs. This in turn triggers the Section 18(2) presumption that the accused person had knowledge of the nature of those drugs. These presumptions of possession and knowledge can operate concurrently to presume, upon proof of the predicate fact, that the accused person had in his or her possession the relevant drugs and that the accused person had knowledge of the nature of those drugs.

However, the legal burden to establish the offence remains with the Prosecution: to establish each constituent element of the charged offence, whether by proving them outright or by proving a predicate fact beyond a reasonable doubt in order to invoke a relevant presumption that by operation of law would give rise to a presumed fact.

If such a presumed fact arises, the burden is then on the accused person to rebut it. In the context of the MDA, the accused person can only discharge this burden by proving the contrary on the balance of probabilities.

B. The MDA Presumptions are consistent with the fundamental rules of natural justice enshrined in Article 9(1) of the Constitution

The CA first considered the nature of the fundamental rules of natural justice – which are procedural rights aimed at securing a fair trial – before determining whether the MDA Presumptions were consistent with such rules. It ultimately held that the MDA Presumptions were compatible with Article 9(1) of the Constitution.

(i) The fundamental rules of natural justice have constitutional status under Article 9(1)

Article 9(1) of the Constitution states that "[n]o person shall be deprived of his life or personal liberty save in accordance with law". Under *Ong Ah Chuan and another v Public Prosecutor* [1979–1980] SLR(R) 710 ("*Ong Ah Chuan*"), the term "law" in Article 9(1) encompasses a legal system that incorporates the fundamental rules of natural justice. Such rules were part and parcel of the common law of England that was in operation in Singapore at the time of the commencement of the Constitution. The "law" to which citizens could have recourse for the protection of fundamental liberties assured to them by the Constitution must be a system of law that did not flout those fundamental rules. Those fundamental rules therefore have the status of constitutional rules and can only be abrogated by a constitutional amendment and not by ordinary statute.

Following from this, legislation that violates any of the fundamental rules of natural justice incorporated in Article 9(1) may be invalidated on the ground of inconsistency with the Constitution. Further, a right, even if not expressly stated in the Constitution, may be found to be implicitly embedded within its provisions, either due to construing a given provision in its context or entirety, or as a matter of necessary implication in the light of the Constitution's other express provisions. For example, the courts have

previously acknowledged that the right to vote, though not expressly found in the text of the Constitution, is a constitutional right.

The CA noted that the applicants were not seeking to invoke particular constitutional rights, such as the right to freedom of speech or the right to choose one's religion. Rather, they sought to enforce those fundamental rules of natural justice which were held in *Ong Ah Chuan* as being embedded within Article 9(1). Thus, the next question was the exact content of those fundamental rules of natural justice, and whether the MDA Presumptions were consistent with such rules.

(ii) The MDA Presumptions are consistent with the fundamental rules of natural justice and are not incompatible with Article 9(1) of the Constitution

1. The scope of the fundamental rules of natural justice

The applicants argued that under *Ong Ah Chuan*, at least one of the following three rules were encompassed within "the fundamental rules of natural justice in the field of criminal law" with constitutional status: (a) the "Presumption of Innocence", meaning that the Prosecution must prove each element of an offence beyond a reasonable doubt; (b) the "Balance of Probabilities Rule", meaning that the Prosecution must prove each element of an offence on the balance of probabilities; or (c) the "More Probable Case Rule", meaning that the Prosecution must establish a factual case, on the existence of each element of an offence, which is more probable than the case advanced by the accused person, even if neither case is proven.

They submitted that upon proving the predicate fact (e.g. if it is proved that the accused was in possession of anything containing a controlled drug), the Prosecution would only have adduced some probative evidence pointing to the veracity of the presumed facts (namely, the possession and knowledge of the drugs). Suppose further that the accused person in turn adduced some probative evidence to disprove the presumed facts, albeit evidence that is insufficient to disprove those facts on the balance of probabilities, he or she would have failed to rebut the presumption, and the court would therefore proceed on the basis of the presumed facts. In such a situation, the applicants argued that all three rules, which they submitted were found within the fundamental rules of natural justice, would have been infringed:

(a) The "Presumption of Innocence" – because the Prosecution would not have proven the elements of knowledge or actual possession beyond a reasonable doubt where the accused person was able to adduce evidence to raise a reasonable doubt as to these elements.

(b) The "Balance of Probabilities Rule" – because it does not follow that the Prosecution would have made its case in relation to the presumed facts on the balance of probabilities where the accused person has failed to rebut those facts on that standard.

(c) The "More Probable Case Rule" – where the strength of the case advanced by the accused person to rebut the presumed facts, while not being *more* probable, is *as* probable as the presumed fact.

In response, the CA first explored the several possible conceptions of the "presumption of innocence." *First*, the "presumption of innocence" may be taken as a reference to the rule that the Prosecution carries the burden of adducing sufficient evidence to prove an accused person's guilt. There is nothing inherently objectionable in the Prosecution being able, in certain circumstances, to prove some part of its case by invoking a statutory presumption that is drawn from a predicate fact that has been proved, and where that presumption may be rebutted by the accused. *Second*, the "presumption of innocence" has also been treated as being synonymous with the principle that the accused is presumed innocent until proven otherwise. This second conception is not distinct from the first, but may be understood as the rationale or explanation underlying the first. The Prosecution bears the burden to adduce evidence that is sufficient to prove an accused person's guilt, because that person is presumed to be innocent to begin with.

Third, the "presumption of innocence" can also be understood as a pronouncement on the standard of proof that is applicable in this context. The Prosecution would carry the burden of adducing evidence that is sufficient to prove an accused person's guilt *beyond a reasonable doubt*. *Fourth*, the "presumption of innocence" has also been seen as a rule of fairness that operates as a shield against punishment without conviction (i.e. not only as a rule of proof). Because an accused person is presumed to be innocent to begin with, it would be unjust to visit punishment upon that person unless the Prosecution had proved that person's guilt, beyond a reasonable doubt in order to secure a conviction; it is only upon proof to such a standard that we would have confidence that only the guilty are liable to be punished.

The CA noted that the existence of these various conceptions suggests it would be misleading to regard the "presumption of innocence" as meaning only that which the applicants contend.

Further, the CA held that *Ong Ah Chuan* does not stand for *any* of the three positions advanced by the applicants. Indeed, it was specifically held in *Ong Ah Chuan* that the fundamental rules of natural justice are consistent with, and not offended by, the Prosecution's ability to rely on statutory presumptions to establish particular elements of the offence, and the court shall find that those elements of the offence are made out unless the accused person is able to rebut the presumption on the balance of probabilities.

The CA noted that in coming to this conclusion, the court in *Ong Ah Chuan* had made the following observations. First, it was fanciful to suggest that such a presumption offends any rule of natural justice where it provides that upon proving a certain fact, the court shall infer the requisite purpose which is consistent with that predicate fact. Second, it was not unfair to require the accused to disprove the presumed fact on a balance of probabilities as this was a matter within his knowledge. Third, such a presumption was also a common feature of legislation regulating the use of items dangerous to society. Finally, the presumed fact was consistent with the inference to be drawn from the proven predicate facts. If there was any substance in the contention that the presumed fact was untrue, it was open to the accused to adduce evidence to rebut the presumed fact, and in any event the accused would be best placed to do that.

The CA held that what the fundamental rules of natural justice require is that *there should be material before the court that is logically probative of facts sufficient to constitute the offence* with which the accused is charged. Section 18(1) of the MDA provides that upon proof of certain circumstances by the Prosecution; a person is presumed to have had a controlled drug in his possession. This provision deals with secondary possession of the drug that the accused person is proven to possess, control or have custody of something which has the drug or which relates to the title in, or delivery of the drug. As such, the predicate facts under section 18(1) are logically probative of the presumed fact of possession of the drugs which are contained in or are related to the thing in issue given that those predicate facts lead to the inference of actual possession of the drugs. Likewise, regarding the presumption under section 18(2), it is reasonable to infer that a person who is in possession of a thing is aware of its nature. This is why, as a matter of common sense and practical application, a person seeking to rebut the presumption of knowledge should be able to say what he thought or believed he was carrying.

A provision that imposes the burden of disproving the presumed facts on a balance of probabilities on an accused is not unconstitutional, especially where the relevant facts are peculiarly within his or her knowledge. The accused is undoubtedly better placed to provide an account for and to discharge the burden of proving matters that are peculiarly within his knowledge than the Prosecution.

Further, the MDA Presumptions are not in place *because* the presumed facts are within the accused's

knowledge; they are imposed as a legislative choice to address a problem thought to be a scourge on society. The fact that they pertain to matters within the accused person's knowledge is a consideration that goes to whether this is ultimately an unfair imposition. The question is whether it is constitutionally impermissible for Parliament to provide that upon proving certain predicate facts beyond a reasonable doubt, the court shall infer or presume a consequential fact until and unless the accused person is able to rebut it; the position established since at least 1980 is that there is nothing unconstitutional about this.

2. The court cannot read unenumerated rights into the Constitution

In the alternative, the applicants argued that the fundamental rules of natural justice may evolve over time and invited the court to read new rights into the Constitution. In dismissing this argument, the CA referred to *Ong Ah Chuan* where it was held that the content of the relevant fundamental rules of natural justice *having constitutional status* is to be determined *at the commencement of the Constitution*. Otherwise, the Constitution would be liable to being amended by judges whose province it is to pronounce upon what the unwritten rules of the common law are. The CA stressed that a court could reconsider an earlier pronouncement on a constitutional issue and conclude that that was erroneous in principle and to be departed from. However, that was not the nature of the present argument advanced by the applicants.

Specifically, where a right cannot be found in the Constitution (whether expressly or by necessary implication), the courts do not have the power to create such a right out of whole cloth simply because they consider it to be desirable. Further, reading unenumerated rights into the Constitution would entail judges sitting as a super-legislature and enacting their personal views of what is just and desirable into law, which is not only undemocratic but also antithetical to the rule of law.

C. The MDA Presumptions do not violate the principle of equality under Article 12(1)

The CA dismissed the applicants' argument that the MDA Presumptions violated the right to equality enshrined in Article 12(1), because of a differentia created between: accused persons charged with drug offences that can be made out in part by invoking the MDA Presumptions; and, on the other hand, accused persons charged with other criminal offences where life and liberty is at stake, for which there is a requisite mental element to be proved in order to make out the offence, and in respect of which there is no statutory provision for a rebuttable presumption of law to apply in respect of one or more elements of that offence.

Article 12(1) of the Constitution provides for the right of equality before the law and the equal protection of the law for all persons. It is framed at a general level and is a declaratory statement of principles relevant to the right to equality. Although there can be no absolute equality in any society, where the State treats individuals differently, the distinctions drawn must be intelligible and bear a rational relationship to the object that the State seeks to achieve. One of the ways this is referred to is the "reasonable classification" test.

In response to the applicants' argument, the CA held that the differentia can and has been rationally justified by the objective of the MDA Presumptions. The court in *Ong Ah Chuan* held that presumptions of this kind are a common feature of modern legislation concerning the possession and use of things that present danger to society like addictive drugs, explosives, arms and ammunition. Parliamentary debates indicate that: (a) the MDA Presumptions were, and are considered to be, a vital tool to combat the specific vices of drug trafficking and abuse in Singapore given its particular vulnerabilities; and (b) the MDA Presumptions have been an essential part of the legal framework enabling Singapore to deal effectively with the drug problem.

The CA also accepted that another facet of the legislative purpose of the MDA Presumptions was to overcome the evidential difficulty of proving the state of mind of the accused person. Parliament's decision to enable the Prosecution to rely on these presumptions must be seen alongside its strong policy

stance taken to strengthen the hands of the enforcement agencies against drug trafficking.

Thus, the CA was satisfied that there was a rational nexus between the differentia drawn in relation to the MDA Presumptions as compared to other serious offences, and the legislative objective which was to provide a robust pro-enforcement toolkit to enable the enforcement agencies to tackle and overcome the scourge of the drug trade in this country, having regard to, among other things, the profit motives of traffickers, the need and ability of the Government to impact the risk calculus of the crime syndicates, and our proximity to a prolific and notorious drug-producing region. The CA held that the MDA Presumptions therefore do not offend Article 12(1) of the Constitution.

D. The courts have no power to read down the MDA Presumptions

The applicants argued that the MDA Presumptions ought to be read down as imposing only an evidential burden to raise a reasonable doubt as to the presumed fact. However, the CA held that this could be disposed of given its above conclusion that the MDA Presumptions are not unconstitutional.

The CA observed that in any event, there was no basis to find such a remedial power within the Constitution, nor any basis to imply such a power into the Constitution. Article 4 of the Constitution already provides for the courts' limited remedial powers to declare void any law enacted after the commencement of the Constitution, which is inconsistent with it, to the extent of their inconsistency. As such, there is no need for the implication of further remedial powers, like the power to construe unconstitutional legislation in a manner that would render it constitutional or the power to read down unconstitutional legislation as the applicants contend here.

Even if the court had such a power, it is unclear how it is to be exercised; how it is to be understood alongside Article 4 of the Constitution; and importantly, whether the scope of the power can extend to overriding the fundamental purpose of that provision. In relation to the last question, the CA observed that reading down the MDA Presumptions to impose on an accused only an evidentiary burden (as the applicants contended), as opposed to a persuasive burden of proving the contrary of the presumed fact, would diminish the effectiveness of the MDA Presumptions. This is because, at least notionally, it would be easier to satisfy the lower burden, undermining the very purpose of the presumptions (as explained in section C above).

E. CA's additional observations on the MDA Presumptions

The CA stressed that it was for Parliament to decide how it will structure anti-narcotics legislation, including the MDA Presumptions, in order to address the ultimate objective of defeating those who seek to profit from the illicit trade in narcotics in Singapore. The role of the courts is limited to determining the constitutionality of the legislative provisions and in doing so, the court does not have an open-ended mandate to evaluate legislation on the basis of its policy preferences.

It also noted how the MDA Presumptions have been construed and applied by the courts over the past 45 years since *Ong Ah Chuan*. First, the MDA Presumptions build on predicate facts that must be proved by the Prosecution beyond a reasonable doubt. The presumed facts generally follow as a matter of logic and common sense from the predicate facts. For instance, where the Prosecution proves that the accused person was in possession of an excessive quantity of drugs much higher than the quantity that would be needed for personal consumption, the natural inference is that the accused person was carrying the drugs for the purposes of trafficking. What the MDA Presumptions do is to codify the natural conclusions to be drawn from the proven facts and mandate the courts to deem these conclusions as proven until and unless they are rebutted.

Second, the MDA Presumptions are rebuttable. The accused person bears the burden of proof to rebut the presumptions on the balance of probabilities. If the circumstances are such that they do not justify the presumed facts, the accused person can displace the presumption by adducing sufficient evidence. The accused person is clearly best placed to explain why and how he or she came into possession of the drugs; and if he or she claims ignorance of its nature, to give a credible account of what he or she thought it was.

Further, in evaluating attempts to rebut the MDA Presumptions, the court should bear in mind the inherent difficulties of proving a negative, in this context, the lack of knowledge, and the burden on the accused person should not be so onerous that it becomes virtually impossible to discharge.

Finally, the MDA Presumptions cannot operate together in the same case: the Prosecution may only rely on the presumption in section 17, or the presumptions in sections 18(1) and/or 18(2). Thus, it is not the case that all the inferential elements of the offence may be presumed against the accused person.

The CA concluded by reiterating the following:

(a) The legal burden is on the Prosecution to establish each element of an offence by adducing evidence to prove them beyond a reasonable doubt. However, there is nothing to prevent Parliament from providing that one or more elements may be established via a rebuttable presumption of law, especially where this is in relation to a logical inference flowing from predicate facts and relates to matters within the knowledge of the accused.
(b) The MDA Presumptions are rebuttable presumptions of law. Upon proof of the predicate fact, the presumed fact will be established, unless it is disproved by the accused proving the contrary, on a balance of probabilities.
(c) The presumptions in sections 18(1) and 18(2) can operate concurrently such that upon proof of the predicate facts, it shall be presumed that the accused had in his possession the drugs and that he knew of their nature. However, the section 17 presumption of trafficking cannot be applied concurrently with the section 18 presumptions.
(d) The MDA Presumptions do not have the effect of displacing or "shifting" the Prosecution's legal burden to prove the guilt of an accused onto that person. However, the Prosecution may seek to discharge its burden in certain discrete aspects by recourse to the MDA Presumptions, subject to the right of the accused to displace the same.
(e) The fundamental rules of natural justice are consistent with, and not offended by, the Prosecution's ability to rely on the MDA Presumptions to establish the relevant offence. It is constitutionally permissible for the Prosecution to establish the necessary element of trafficking or possession, as the case may be, by proof of the predicate fact(s) beyond a reasonable doubt, given that they are logically probative of the presumed facts.
(f) Any differentia between on the one hand, accused persons being prosecuted for drug offences that can be made out by invoking the MDA Presumptions, and on the other hand, accused persons charged for criminal offences where life and liberty are at stake and for which there are no equivalent presumptions, is rationally justified by Singapore's zero-tolerance policy to drugs in light of our vulnerabilities.

IV. Conclusion

Overall, the CA held that as the applicants' substantive arguments had no merit, there was no reason to reinstate the underlying appeal. Thus, the CA dismissed the application.

Written by: Emily Tan Xin Hui, 3rd Year LLB student, Singapore Management University Yong Pung How School of Law.
Reviewed by: Ong Ee Ing, Principal Lecturer, Singapore Management University Yong Pung How School of Law.